

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
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This issue contains:

U.S. Customs Service

T.D. 88-39 and 88-40

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 88-39)

REVOCATION OF CUSTOMS BROKER'S PERMITS BY ACTION OF LAW

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: Notice is hereby given that on April 28, 1988, pursuant to section 641(c) (3), Tariff Act of 1930, as amended (19 U.S.C. 1641(c) (3)), and Part 111.45 of the Customs Regulations, as amended (19 CFR 111.45), the permits for the Customs brokers listed below were revoked in the districts indicated.

Baltimore:

Express Service International
Floarea Florescu
Michael McLean
Movers Port Service
Nathan Wein

Boston:

Compass Forwarding Co., Inc.

Charleston:

Burlington Northern Customs Brokerage
C.F. Export-Import Services, Inc.

Chicago:

Janet K. Lutton

Detroit:

Air Express International
C.F. Export-Import Services, Inc.
Compagnie d'Affrètement et de Transport U.S.A., Inc.

Dallas/Fort Worth:

Dorf International Ltd.

Duluth:

Associated Customs Brokers, Inc.

Honolulu:

Arthur J. Fritz & Co.

Houston:

I.C.E. Co., Inc.
McLean Cargo Specialists
Western Overseas Corp.

Laredo:

Dynamic Ocean Services International

Miami:

Almac Shipping Co., Inc.
C.F. Export-Import Services
Lusk Shipping Co., Inc.
McLean Cargo Specialists, Inc.

New Orleans:

Emery Customs Brokers

New York:

Janet K. Lutton
Lusk Shipping Co., Inc.

Norfolk:

BDP International, Inc.

Philadelphia:

N.J. DeFonte

Portland Me.:

J.F. Moran Co., Inc.

San Francisco:

Brinkley and Associates
Duty Drawback Services, Inc.
Frank Cadenhead
Geo. S. Bush & Co., Inc. (Portland)
Howard Hartry
Mohawk Customs & Shipping Co.
P.S. Clearance
S.H. Brogan Consulting, Inc.

Seattle:

Seaport International

Savannah:

Four Winds
Louis-Ferdinand and Co., Inc.
Lusk Shipping Co., Inc.

Tampa:

Lund & Pullara, Inc.
Lusk Shipping Co., Inc.
Marvin Madden Co.
M.G. Maher & Co., Inc.

Dated: July 1, 1988.

MICHAEL H. LANE,
Acting Commissioner of Customs.

19 CFR Part 12

(T.D. 88-40)

CUSTOMS REGULATIONS AMENDMENTS RELATING TO IMPORTATION OF MOTOR VEHICLES AND MOTOR VEHICLE ENGINES UNDER THE CLEAN AIR ACT**AGENCY:** U.S. Customs Service, Department of the Treasury.**ACTION:** Final rule.

SUMMARY: This document sets forth amendments to the Customs Regulations regarding the compliance of imported motor vehicles and engines with applicable emission requirements of the Environmental Protection Agency (EPA) under the Clean Air Act. These changes conform the Customs Regulations to changes made in the applicable EPA regulations in a final rule of that agency on September 25, 1987, 52 FR 36136, effective July 1, 1988. Under these changes, subject to certain exceptions, individuals and businesses will no longer be permitted to enter vehicles not in conformity with applicable emission requirements subject to bringing the vehicles into compliance within a 90-day period. Only independent commercial importers (ICI's) who hold currently valid certificates of conformity from EPA will be permitted to enter nonconforming vehicles, and they may import vehicles for individuals or businesses not otherwise permitted to import them. An ICI, subject to the more specific definition in EPA regulations, is independent of any manufacturer and does not represent a manufacturer for the distribution of products in the United States. An ICI certificate holder will be responsible for bringing vehicles into compliance with applicable emission requirements, warranting the work, furnishing maintenance instructions, issuing recall notices, testing where required and record keeping. Subject to a few narrow exceptions, importations of ICI certificate holders will not be subject to a bond charge for EPA conformity, but a 15-working day storage period will be required after completion of the work for confirmatory EPA reviews of vehicles and records.

The changes also will eliminate the exception to emission requirements for vehicles which are at least five model years old and imported by a first-time individual importer for personal use. Further, declarations will no longer be required for importations of most vehicles manufactured abroad to meet applicable United States emission requirements and labeled to show their compliance.

These limitations on the importation of nonconforming vehicles are due to various problems that have developed such as difficulties in reviewing and keeping records on a diverse group of importers, problems with enforcing emission standards on improperly modified vehicles and engines, and abuse of the five-model-year-old exception. Further details concerning the changes, the reasons for them,

and the expected efficiencies and improved program effectiveness which will result are set forth in the cited EPA notice.

EFFECTIVE DATE: These amendments are effective with respect to merchandise entered, or withdrawn from warehouse for consumption, on or after July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Louis Alfano, Other Agency Enforcement Branch, Office of Trade Operations, U.S. Customs Service (202) 566-8651.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Regulations comprising the joint program under which the Environmental Protection Agency (EPA) and the Customs Service provide for the conditions and circumstances under which vehicles and engines of foreign origin and motor vehicles not in compliance with Federal emission requirements may be imported were published by EPA and the Customs Service on February 1, 1972 (37 FR 2432). Subsequently, a need for changes in the joint program was identified which would improve emissions compliance of nonconforming vehicles and engines as well as improve the overall efficiency of the program. Notices of proposed rulemaking were published by EPA and the Customs Service on July 21, 1980 (45 FR 48812 and 48817). A further EPA notice was published in the Federal Register on November 4, 1983 (48 FR 5092), and a supplemental notice of proposed rulemaking was published on September 5, 1985 (50 FR 36838). EPA's final notice of rulemaking on this subject, with which the changes made by this document will conform, as published on September 25, 1987 (52 FR 36136), and will be effective July 1, 1988.

That document contains an extensive discussion of the EPA rulemaking process, all of the considerations, options and comments taken into account, and the various problems with present procedures which the changes are intended to resolve. The comments received in response to each of the EPA notices have been summarized and analyzed in a document entitled "Summary and Analysis of Comments Pertaining to the Proposed Rulemaking Entitled 'Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act,'" which is available for review in EPA's Public Docket EN-79-9, U.S. EPA, Central Docket Section, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. That summary and analysis should be consulted for a complete understanding of EPA's nonconforming import program.

Section 203 of the Clean Air Act, as amended (42 U.S.C. 7521), prohibits the importation of any new motor vehicle or motor vehicle engine, as defined in § 216(1) of the Act, not covered by an EPA certificate of conformity unless it is exempted by EPA or is imported under the EPA and Customs joint regulations. The regulations cur-

rently in effect generally permit the conditional importation of a nonconforming vehicle or engine by any person or business, provided that the Customs entry bond is charged with the condition that the vehicle or engine will be brought into conformity with EPA emission requirements within 90 days. An exception to EPA's modification and/or testing requirements permits a first-time individual importer to import a nonconforming vehicle or engine at least five model years old for personal use without demonstrating emissions compliance.

Under the changes made by EPA, and with which the instant changes in the Customs Regulations will conform, the "five model year old personal use" exception is eliminated. With respect to other nonconforming vehicles, the new regulations substantially change both the manner in which vehicles and engines can be imported and the manner in which emissions compliance can be demonstrated. Subject to certain specified exceptions, only independent commercial importers (ICI's) who hold valid certificates of conformity issued by EPA will be permitted to import nonconforming vehicles or engines. An ICI, subject to the more specific definition in EPA regulations, is an importer who does not have a contractual agreement with a manufacturer to act as its authorized representative for the distribution of motor vehicles or engines in the United States market. Individuals who previously could import a nonconforming vehicle or engine directly will now be required to arrange for importations through ICI certificate holders.

EPA's new provisions also substantially change the manner in which emissions compliance may be demonstrated. Except during an initial five-year phase-in period, all vehicles or engines which are less than six years old, as determined by the date of production, must be covered by an EPA certificate of conformity. Moreover, an ICI may import a vehicle or engine six or more years old and not otherwise exempt from emission standards because of age, subject to a modification/test program which is more stringent than that now in effect. During the five-year phase-in period, some vehicles or engines less than six years old may also be imported subject to the more stringent modification/test program, rather than the new certification-based program. The new regulatory scheme also establishes an exemption from emissions compliance for vehicles or engines more than 20 years old.

For vehicles or engines imported by ICI certificate holders, the bond charge requirement currently found in § 12.73(c), Customs Regulations (19 CFR 12.73(c)), will be largely eliminated. However, conditional admission under bond will still be required in some instances. Importations under exemptions requiring a bond charge include importations for repairs or alterations, testing, or for display, and importations of prototype vehicles or engines prior to certification. In many of these cases, individuals, and not just ICI certificate

holders, may continue to import eligible vehicles or engines directly under bond.

These amendments to the Customs Regulations also end the requirement for written declarations for vehicles and engines manufactured to comply with applicable emission requirements and imported by or on behalf of manufacturers (other than ICI's) holding an EPA certificate of conformity. Compliance in these circumstances is usually evidenced by the manufacturer's label. To the extent the declaration requirement is eliminated, the paperwork burden on both importers and the Government is reduced.

SPECIAL ANALYSES

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared. However, an analysis was submitted by EPA to the Office of Management and Budget (OMB) for review with respect to the EPA regulations with which these changes are merely in conformity with no further substantive changes. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Public Docket EN-79-9 located at EPA's Central Docket Section (LE-131A), 401 M Street, SW., Washington, D.C. 20460.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulation, as amended, will not have significant impact on a substantial number of small entities beyond the impact of the regulations of EPA which have already been promulgated and with which this regulation merely conforms without further substantive change. Accordingly, this regulation is not subject to the regulatory analysis and other requirements of 5 U.S.C. 603 and 604. However, EPA prepared a regulatory flexibility analysis for their correlative regulations. That document is also available in the public docket for EPA's rulemaking as identified above.

The collections of information contained in this rule conform to those in the EPA regulations, which were reviewed and approved by the Office of Management and Budget under OMB control number 2060-0095.

DRAFTING INFORMATION

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

The changes in the EPA regulations, to which the changes in this document merely conform without further substantive changes, were promulgated previously by EPA with full opportunity for pub-

lic comment, and consideration of the comments submitted. The availability for review of those comments is explained in EPA's final notice published in 52 FR 36136, and as more fully explained above. Therefore, the further solicitation of comments by the Customs Service would serve no useful purpose. Accordingly, it has been determined that good cause exists for dispensing with the procedures for notice and the opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(B). For the same reasons, good cause exists for dispensing with an effective date delayed beyond the specified effective date of July 1, 1988, pursuant to 5 U.S.C. 553(d)(3).

LIST OF SUBJECTS IN 19 CFR PART 12

Air pollution control, Customs duties and inspection, Imports, Motor vehicle pollution, Motor vehicles.

AMENDMENTS TO THE REGULATIONS

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 and the specific authority citation for § 12.73 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Headnote. 11, Tariff Schedules of the United States), 1624.

§ 12.73 also issued under 19 U.S.C. 1484; 42 U.S.C. 7522, 7601.

2. Section 12.73 is revised to read as follows:

§ 12.73 Motor vehicle and engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 85 and 86. Those regulations should be consulted for more detailed information concerning EPA emission requirements. The requirements apply to imported motor vehicles, but do not apply to separately imported non-chassis mounted engines to be used in light-duty trucks or other light-duty vehicles. Other separately imported engines for heavy-duty motor vehicles are covered, and all references in this section to motor vehicles should be deemed to include motor vehicles as well as these heavy-duty engines. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) *Importation of complying vehicles.*

(1) *Labeled vehicles.* Vehicles which in their condition as imported are covered by an EPA certificate of conformity and which bear the manufacturer's label showing such conformity and other EPA-required information shall be deemed in compliance with applicable emission requirements for the purpose of Customs admissibility and

entry liquidation determinations. This subparagraph does not apply to importations of ICI's covered by paragraph (d) of this section.

(2) *Pending certification.* Vehicles otherwise covered by subparagraph (1) of this paragraph which were manufactured for compliance with applicable emission requirements, but for which an application for a certificate of conformity is pending with the EPA may be conditionally released from Customs custody pending production of the certificate of conformity within 120 days of release.

(c) *Importation of vehicles previously in compliance.*

(1) *Vehicles of returning residents.* Vehicles of residents returning from Canada, Mexico or other countries as EPA may designate are not covered by this section.

(2) *Vehicles of commuting nonresidents and tourists.* A district director through the issuance of an appropriate means of identification to be affixed to a vehicle may waive all of the requirements of this section for a nonresident regularly crossing the Canadian or Mexican border, or waive the requirements for Mexico or Canadian-registered vehicles of tourists or other travelers.

(3) *Participants in EPA-approved catalytic converter or oxygen sensor control programs.* Further evidence of emissions compliance will not be required for catalytic converter or oxygen sensor-equipped vehicles imported for participating in EPA-approved catalytic converter or oxygen sensor control programs and subject to the requirements of those programs.

(4) *Previously labeled, modified or imported vehicles.* Any other vehicle of United States or foreign origin manufactured with a catalytic converter or oxygen sensor, or any previously imported vehicle subsequently modified with a catalytic converter or oxygen sensor, will not be deemed in compliance with applicable emission requirements if used outside of the United States, Canada, Mexico, or other countries as EPA may designate, until the catalytic converter and/or oxygen sensor is replaced. Conditional release from Customs custody for the purpose of the modification is subject to a 120-day period for completion. Subject to special documentation at the time of export from the United States and approval and other requirements of EPA, replacement of a catalytic converter or oxygen sensor may be avoided if the equipment is disconnected before export from the United States and reconnected after subsequent importation.

(d) *Importation of vehicles by ICI's.* Except for motor vehicles imported in the applicable circumstances covered by paragraphs (c), (e), (f), (g) or (h) of this section, an individual or business other than an independent commercial importer (ICI) holding a currently valid EPA certificate of conformity may not enter a motor vehicle to which EPA emission requirements apply. An ICI, subject to the more specific definition in EPA regulations, is an importer which does not have a contract with a foreign or domestic motor vehicle manufacturer for distributing products into the United States market. However, a motor vehicle may not be conditionally admitted

unless it falls within one of the categories provided for in 40 CFR 85.1505 or 85.1509. Before the vehicle is deemed to be in compliance with applicable emission requirements and, therefore, finally admitted into the United States, the ICI must keep the vehicle in storage for a 15-working day period. This period follows notice to EPA of completion of the compliance work to give EPA the opportunity to conduct confirmatory testing and inspect the vehicle and records. The 15-working day period is part of the 120-day period in which an ICI must bring the vehicle into emissions compliance. Individuals and businesses not entitled to enter nonconforming motor vehicles may arrange for their importation through an ICI certificate holder. In these circumstances, the ICI will not act as an agent or broker for Customs transaction purposes unless otherwise licensed or authorized to do so.

(e) *Exemptions and exclusions from emission requirements based on age of vehicle.* The following motor vehicles, except as shown, may be imported by any person and do not have to be shown to be in compliance with emission requirements or modified before entitled to admissibility:

(1) Gasoline-fueled light-duty trucks and light-duty motor vehicles manufactured before January 1, 1968;

(2) Diesel-fueled light-duty motor vehicles manufactured before January 1, 1975;

(3) Diesel-fueled light-duty trucks manufactured before January 1, 1976;

(4) Motorcycles manufactured before January 1, 1978;

(5) Gasoline-fueled and diesel-fueled heavy-duty engines manufactured before January 1, 1970; and

(6) Motor vehicles not otherwise exempt from EPA emission requirements and more than 20 years old. Age is determined by subtracting the year of production (as opposed to model year) from the year of importation. The exemption under this subparagraph is available only if the vehicle is imported by an ICI.

(f) *Exemption for exports.* A motor vehicle intended solely for export to a country not having the same emission standards applicable in the United States, and both the vehicle and its container bear a label or tag indicating that it is intended solely for export, is exempt from applicable United States emission requirements. 40 CFR 85.1709.

(g) *Exemptions for diplomats, foreign military personnel and non-residents.* Subject to the condition that they are not resold in the United States, the following motor vehicles are exempt from applicable emission requirements:

(1) A motor vehicle imported solely for the personal use of a non-resident importer or consignee and the use will be for a period not to exceed one year; and

(2) A motor vehicle of a member of the armed forces of a foreign country on assignment in the United States, or of a member of the

personnel of a foreign government on assignment in the United States or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law. For special documentation requirements see paragraph (i)(4) of this section.

(h) *Exemptions and exclusions based on prior EPA authorization.* The following motor vehicles are exempt or excluded from applicable emission requirements if prior approval has been obtained in writing from EPA:

(1) *Importations for repairs.* Any motor vehicle which is imported solely for repairs or alterations and which is not sold, leased, registered or licensed for use or operated on public roads or highways in the United States. 40 CFR 85.1511(b)(1);

(2) *Importations for testing.* Any motor vehicle imported solely for testing. Test vehicles may be operated on and registered for use on public roads or highways provided that the operation is an integral part of the test. 40 CFR 85.1511(b)(2). This exemption is limited to a period not exceeding one year from the date of importation unless a request is made under 40 CFR 85.1705(f) for a one-year extension;

(3) *Prototype vehicles.* Any motor vehicle imported for use as a prototype in applying for EPA certification. 40 CFR 85.1511(b)(3) and 85.1706. In the case of an ICI, unless the vehicle is brought into conformity within 180 days from the date of entry it shall be exported or otherwise disposed of subject to paragraph (1) of this section;

(4) *Display vehicles.* Any motor vehicle which is imported solely for display and which will not be sold, leased, registered or licensed for use on or operated on the public roads or highways in the United States. 40 CFR 85.1511(b)(4).

(5) *Racing cars.* Any motor vehicle which qualifies as a racing vehicle meeting one or more of the criteria found at 40 CFR 85.1703(a), and which will not be registered or licensed for use on or operated on public roads or highways in the United States. See also 40 CFR 85.1511(c)(1);

(6) *National security importations.* Any motor vehicle imported for purposes of national security by a manufacturer. 40 CFR 85.1511(c)(2), 85.1702(a)(2) and 85.1708; and

(7) *Hardship exemption.* Any motor vehicle imported by anyone qualifying for a hardship exemption. 40 CFR 85.1511(c)(3).

(i) *Documentation requirements.*

(1) *Exception for manufacturers.* The special documentation requirements of this paragraph do not apply to the entry of any motor vehicles shown to be in compliance with applicable emission requirements under paragraph (b)(1) of this section relating to labeling.

(2) *Declarations of other importers.* Release from Customs custody shall be refused with respect to all other entries unless there is filed

with the entry in duplicate a declaration in which the importer or consignee declares or affirms its status as an original equipment manufacturer, an ICI holding an applicable certificate of conformity, or other status, and further declares or affirms the status or condition of the imported vehicles and the circumstances concerning importation including a citation to the specific paragraph or subparagraph in this section upon which application for conditional or final release from Customs custody is applied for.

(3) *Other documentation and information.* An importer's declaration shall include or be submitted with the following further information and documentation:

(A) The importer's name and address and telephone number;

(B) Identification of the vehicle or engine number, the vehicle owner's taxpayer identification number, and his or her current address and telephone number in the United States if different than as provided for in subparagraph (3)(A) of this paragraph;

(C) Identification, where applicable, of the place where the vehicle will be stored until EPA approval of the importer's application to EPA for final admission as required for vehicles imported under 40 CFR 80.1505, 85.1509, or 85.1512 having reference to certain importations under paragraphs (c)(4) or (d)(1) of this section;

(D) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Clean Air Act and regulations promulgated thereunder;

(E) Identification, where applicable, of the certificate of conformity by means of which the vehicle is being imported;

(F) The date of manufacture of the vehicle;

(G) The date of entry;

(H) Identification of the vessel or carrier on which the merchandise was shipped;

(I) The entry number where applicable;

(J) Where prior EPA authorization is required for an exemption or exclusion, a copy of that authorization; and

(K) Such other further information as may be required by the EPA or the Customs Service.

(4) *Documentation from diplomats and foreign military personnel.* For entries for which an exemption is claimed under paragraph (g)(2) of this section, there must also be attached to the declaration required under paragraph (i)(2) of this section a copy of the motor vehicle importer's official orders, if any, or if a qualifying member of the personnel of a foreign government on assignment in the United States, the name of the embassy to which the importer is accredited.

(j) *Release under bond.* If a declaration filed in accordance with paragraph (i)(2) of this section states that the entry is being filed under circumstances described in either paragraph (c)(4), (h)(1), (h)(2), (h)(3) or (h)(4) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301,

containing the bond condition set forth in § 113.62 of this chapter for the production of an EPA statement that the vehicle or engine is in conformity with Federal emission requirements. Within the period in paragraph (h)(2), (h)(3) or (c)(4) of this section, or in the case of paragraph (h)(1) or (h)(4) of this section, the period specified by EPA in its authorization for an exemption, or such additional period as the district director of Customs may allow for good cause shown, the importer or consignee shall deliver to the district director the prescribed statement. If the statement is not delivered to the district director for the port of entry within the specified period, the importer or consignee shall deliver or cause to be delivered to the district director those vehicles which were released under a bond required by this paragraph. In the event that the vehicle or engine is not redelivered within five days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(k) *Notices of inadmissibility or detention.* If a motor vehicle is determined to be inadmissible before release from Customs custody, or inadmissible after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if a motor vehicle cannot be released from Customs custody merely because the importer has failed to attach to the entry the documentation required by paragraph (i) of this section, the vehicle shall be held in detention by the district director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing documentation. An additional 30-day extension may be granted by the district director upon application for good cause shown. If at the expiration of a period not over 60 days the documentation has not been filed, a notice of inadmissibility will be issued.

(l) *Disposal of vehicles not entitled to admission.* A motor vehicle denied admission under any provision of this section shall be disposed of in accordance with applicable Customs laws and regulations. However, a motor vehicle or engine will not be disposed of in a manner in which it may ultimately either directly or indirectly reach a consumer in a condition in which it is not in conformity with applicable EPA emission requirements.

(m) *Prohibited importations.* The importation of motor vehicles otherwise than in accordance with this section and the regulations of EPA in 40 CFR parts 80, 85, 86 and 600 is prohibited.

MICHAEL H. LANE,

Acting Commissioner of Customs.

Approved: June 24, 1988.

JOHN P. SIMPSON,

Acting Assistant Secretary (Enforcement).

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